



October 29, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin Law Department
P. O. Box 1546
Austin, Texas 78767-1546

OR2002-6131

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171354.

The City of Austin (the "city") received a request for copies of information regarding a specified company's certification as a minority-owned business and that company's operations within the city's marketplace for at least three months prior to the date of application for certification. You claim that the requested information is excepted from disclosure pursuant to section 552.128 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.128 provides in pertinent part:

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

Gov't Code § 552.128. We note that the purpose of this exception to disclosure is to protect the "personal" information that individuals must submit to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business. *See* Debate on Tex. H.B. 625 on the Floor of the Senate, 75th Leg., R.S. (May 20, 1997) (transcript available from Senate Staff Services Office). We, therefore, conclude that the primary purpose of section 552.128 is to protect the privacy interests of individuals who must submit financial and other information regarding their businesses to governmental bodies.

You state that the requested information includes information that was submitted by a potential vendor or contractor to the city in connection with an application for certification as a historically underutilized or disadvantaged business under a local certification program established by ordinance and set forth in chapters five through seven of the city's code. Based on our review of your representations and the information at issue, we find that some of this information was submitted to the city in connection with an application for certification as a historically underutilized or disadvantaged business. You state that the requestor has not provided you with the applicant's or the applicant's agent's express written permission to release the requested information to the requestor. *See* Gov't Code § 552.128(b)(2). Accordingly, we conclude that the city must withhold this information pursuant to section 552.128. However, because it appears that the remaining information at issue was not submitted by a potential vendor or contractor to the city in connection with an application for certification as a historically underutilized or disadvantaged business, we find that the city may not withhold the information that we have marked under section 552.128 of the Government Code. Consequently, the city must release the marked information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

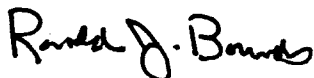
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 171354

Enc. Marked documents

cc: Ms. Margie R. Hernandez
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(w/o enclosures)